

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SIERRA NEVADA REGION

CUSTOM PRODUCT CONTRACT
FOR
FULL LOAD SERVICE
WITH

FULL LOAD SERVICE CUSTOMER

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1. PREAMBLE:

This Contract is made this ____ day of _____, 2004, pursuant to the Acts of Congress approved June 17, 1902 (32 Stat. 388); August 26, 1937 (50 Stat. 844); August 4, 1939 (53 Stat. 1187); and August 4, 1977 (91 Stat. 565); and Acts amendatory or supplementary to the foregoing Acts; between the UNITED STATES OF AMERICA, acting by and through the Administrator, WESTERN AREA POWER ADMINISTRATION, DEPARTMENT OF ENERGY, hereinafter called Western, represented by the officer executing this Contract, or a duly appointed successor, also sometimes hereinafter called the Contracting Officer; and the FULL LOAD SERVICE CUSTOMER, hereinafter referred to as FLS or Contractor, a type of entity, its successors or assigns; also hereinafter referred to individually as Party and together as Parties.

2. EXPLANATORY RECITALS:

2.1 The Parties entered into Base Resource Contract 00-SNR-003__ on _____, 2000. The Base Resource Contract provides the terms and conditions whereby Western will provide Base Resource Electric Service to FLS.

2.2 Western is currently revising Exhibit D of FLS's Base Resource Contract. Western will offer the revised Exhibit D to all customers prior to beginning service under the Base Resource Contract. If FLS rejects the provisions of Exhibit D, Revision 1, its Base Resource Contract with Western will terminate.

2.3 At times, power provided under the Base Resource Contract will not be sufficient to meet the electrical needs of FLS at the delivery point(s) specified herein.

2.4 Western's final 2004 Power Marketing Plan, published in the Federal Register on June 25, 1999 (64 FRN 34417), provides for Western to develop Custom Products for customers who request them. Section [8.7] of the Base Resource Contract allows for Western to develop a Custom Product for FLS.

2.5 FLS has requested a Custom Product in the form of Supplemental Power to meet the load at a specific delivery point(s).

2.6 FLS has also requested Western to provide Portfolio Management Services.

2.7 Western and FLS recognize that, due to load diversity, there may be benefits to aggregating some Full Load Service Customers' Base Resource Percentages and Supplemental Power requirements for power purchases; and

additional business efficiencies may be realized through consolidation of power scheduling and related activities.

[w/TPPSC 2.8 FLS has power purchase contracts with power suppliers other than Western. FLS has requested and Western is willing to consider including these contracts in FLS's portfolio to be managed by Western.]

2.9 Western is willing to provide the services requested by FLS once FLS has accepted Exhibit D, Revision 1 to its Base Resource Contract with Western.

3. AGREEMENT:

The Parties agree to the terms and conditions set forth herein.

4. EFFECTIVE DATE AND TERM OF CONTRACT:

4.1 This Contract shall become effective upon execution by the Parties and shall remain in effect through September 30, 2010; except as otherwise provided for herein.

4.2 In the event that FLS provides notice of termination of its Base Resource Contract 00-SNR-003___ pursuant to Exhibit D, Revision 1 of said Contract, this Contract shall immediately become null and void and no service shall be provided under this Contract.

4.3 Except as provided for in Section 4.2 above, service under this Contract shall begin January 1, 2005.

4.4 Western may suspend or terminate service under this Contract pursuant to Section 16.

4.5 All obligations incurred under this Contract shall be preserved until satisfied.

5. DEFINITION OF TERMS:

As used herein, the following terms whether singular or plural, or used with or without initial capitalization, shall have the following meanings:

5.1 “Base Resource” means CVP and Washoe Project power output, as determined by Western to be available for marketing, after (1) meeting the requirements of Project Use and First Preference Customers, and (2) any other adjustments required for maintenance, regulation, reserves, transformation losses, and ancillary services.

5.2 “Custom Product” means a combination of products and services, excluding provisions for load growth, which may be made available by Western per customer request, using the customer’s Base Resource and supplemental purchases made by Western.

5.3 “Full Load Service Customer” means a Base Resource customer that will have its entire load at the delivery point(s) specified in Exhibit A met with Western power [**w/TPPSC** and Third-Party Power], and whose Portfolio Management functions for said delivery point(s) will be performed by Western.

5.4 “Portfolio Management Services” means determining balanced hourly load and resource schedules for a customer.

5.5 “Regional Transmission Organization” or “RTO” means an organization that meets the minimum characteristics and performs the minimum functions specified in Federal Energy Regulatory Commission Order 2000, as that order may be amended or superseded.

5.6 “Supplemental Power” means firm capacity and energy, provided by Western, that a customer(s) needs in addition to its Base Resource for use in meeting that customer’s load.

[w/TPPSC 5.7 “Third-Party Power” means power from a power supply contract(s) that FLS has with a power supplier other than Western, which power may be scheduled to FLS to meet FLS’s load at the delivery point(s) specified in Section 3 of Exhibit A.

5.8 “Third-Party Power Supply Contract (TPPSC)” means an agreement FLS has to purchase energy from an entity other than Western.]

6. SUPPLEMENTAL POWER FURNISHED BY WESTERN:

6.1 Western will provide additional power to those Full Load Service Customers whose loads exceed their Base Resource. Western may aggregate the needs of Full Load Service Customers to determine Supplemental Power requirements.

6.2 Supplemental Power provided by Western may include long-term, short-term, day-ahead, and hour-ahead purchases, and/or other arrangements.

6.3 Western will provide Supplemental Power to FLS to serve the load unmet by the power provided under FLS’s Base Resource Contract. FLS’s expected peak monthly capacity and energy are specified in Section 2 of Exhibit A attached hereto. FLS shall provide written notification to Western as soon as practicable, and not less than ninety (90) days prior to, any expected increase or decrease in the capacity and energy amounts specified in Exhibit A.

7. DELIVERY ARRANGEMENTS:

7.1 Western will use best efforts to contract with the appropriate parties for the transmission and distribution service necessary to make FLS's Supplemental Power available at the point(s) of delivery specified in Section 3 of Exhibit A.

7.2 In the event that Western is unable to secure transmission and distribution service on behalf of FLS, FLS shall ultimately be responsible for arranging for the transmission and distribution necessary to receive Supplemental Power provided under this Contract to the delivery point specified in Section 3 of Exhibit A. By November 1, 2004, FLS shall provide written notification demonstrating that it has arranged for delivery of its Supplemental Power. Said arrangements must allow for Western to schedule transmission and distribution on behalf of FLS.

8. PORTFOLIO MANAGEMENT SERVICES:

8.1 Western will need load data and other information to determine the power necessary to meet FLS's load. If Western does not have access to the information it needs, Western will request it from FLS. FLS shall provide the information within thirty (30) days of a request from Western. Said data may include, but is not limited to, the following:

8.1.1 Historical hourly load data at the delivery point(s) specified in Section 3 of Exhibit A; and

8.1.2 Expected future loads at the delivery point(s) specified in Section 3 of Exhibit A during the term of this Contract.

8.2 By October 1 of each year, FLS will submit to Western its annual planned power usage for the upcoming calendar year. FLS shall provide this information to Western in a format agreed to between the Parties. FLS must provide any planned significant changes in its power usage to Western in writing not less than

ninety (90) days prior to the planned change. Western will revise Exhibit A to this Contract to reflect such changes in power usage. The information provided by FLS will be used by Western in determining daily power schedules for FLS.

[w/TPPSC 8.3 FLS shall provide to Western copies of Third-Party Power Supply Contracts and related transmission contracts. Each contract must allow for Western to schedule power and/or transmission on behalf of FLS. Sole responsibility for billing and payment for transactions related to these contracts shall remain with FLS. Western reserves the right to examine FLS's contracts and, at Western's discretion, to decline to integrate said contracts into FLS's portfolio.

8.4 During the term of this Contract, ten (10) days prior to the beginning of each month, FLS shall provide to Western the guidelines that it wants Western to follow in the scheduling of power and transmission for FLS under the contracts referenced in Section 8.3.

8.5 FLS shall consult with Western prior to entering into any new Third-Party Power Supply Contracts after execution of this Contract. Western reserves the right to decline to integrate any Third-Party Power Supply Contracts executed after execution of this Contract into FLS's portfolio.]

8.6 On a daily basis, using the information provided in Sections 8.1 **[w/o TPPSC** and] 8.2 **[w/TPPSC** , and 8.4], Western will determine hourly schedules of the power necessary to fully serve FLS's load at the delivery point(s) specified in Exhibit A, as follows:

8.6.1 Using the information as provided in Section 8 of FLS's Base Resource Contract, Western will determine the hourly use of FLS's Base Resource for the day.

8.6.2 If FLS's Base Resource does not fully meet FLS's forecasted load, Western will schedule FLS's share of exchange program energy, if any, to serve FLS's load.

8.6.3 Once all Base Resource and exchange program energy has been distributed, Western will meet FLS's unmet forecasted load with Supplemental Power [**w/TPPSC** and/or Third-Party Power].

8.6.4 Any Base Resource in excess of FLS's forecasted load will be retained by Western for distribution under the exchange program in accordance with Exhibit B to FLS's Base Resource Contract with Western.

8.6.5 After Western has balanced the hourly load and resource schedule for FLS, Western will provide the schedule to FLS's scheduling entity in accordance with Control Area Operator protocols.

[**w/TPPSC** 8.7 Using the information submitted by FLS pursuant to Section 8.4 above, and any contracts that FLS has entered into for the purchase of power and transmission, Western shall prepare hourly pre-schedules of Third-Party Power and transmission needed to meet FLS's load. Western will only use Third-Party Power Supplier Contracts and transmission contracts that meet the requirements of Section 8.3 to prepare FLS's hourly pre-schedules. In conjunction with such service, FLS will provide a contact person and an alternate who can be contacted by Western during normal business hours.]

8.8 During the active day, Western will use best efforts to take the appropriate actions necessary to balance loads and resources.

8.9 Western shall not be liable in the event that power and/or transmission is scheduled either in excess of or below that necessary to serve FLS's hourly load.

9. ADDITIONAL SERVICES NECESSARY TO PROVIDE CUSTOM PRODUCT(S):

FLS understands that additional services, including but not limited to, scheduling the resource and control area services may be necessary to provide the Custom Product(s) requested under this Contract. FLS shall be responsible for all costs incurred by Western to provide Full Load Service as specified in this Contract.

10. SCHEDULING AND METERING:

10.1 All services provided by Western to FLS under this Contract will be subject to the same scheduling and metering terms and conditions as provided under FLS's Base Resource Contract with Western the same as if they had been expressly set forth herein.

10.2 FLS shall provide the name and other pertinent information regarding its scheduling entity to Western no less than sixty (60) days prior to receiving service under this Contract. Western shall have no obligation to provide any service to FLS if said information has not been provided to Western. However, FLS shall not be relieved of its payment obligations for service hereunder.

11. REGIONAL TRANSMISSION ORGANIZATION OR CONTROL AREA:

Western currently operates within the California Independent System Operator's control area. The Parties understand that Western may join an RTO or become a part of a different control area. In the event Western either joins or is required to conform to the protocols of an RTO or a different control area, the Parties shall mutually agree to make any protocol changes to this Contract to conform to the terms and conditions required

by such organization. In the event that: 1) Western incurs costs from an RTO or a different control area for serving FLS's load; or 2) FLS does not abide by the protocols applicable to Western and Western incurs costs as a result, FLS agrees to pay all such costs attributable to FLS.

12. REIMBURSABLE FINANCING: FOR FEDERAL CUSTOMERS ONLY

12.1 Western may purchase power or provide other services using reimbursable authority pursuant to the Economy Act, 31 U.S.C. 1535. Western's reimbursable authority shall not exceed the fiscal year (presently October 1st of the current calendar year through September 30th of the following calendar year) estimated costs related to power and other services provided by Western.

12.2 Each February 1st, FLS shall provide written notification to Western of its budgeted appropriations, or forecasted plan for budget requests for power and other services provided by Western, for the upcoming fiscal year. FLS shall inform Western of any major changes to the forecasted budget authority.

12.3 Each fiscal year, FLS will obligate or otherwise commit the value of the Custom Product(s) to be provided by Western in a manner that is standard for the agency.

12.4 Western shall be under no obligation to continue service under this Contract if the cost of continuing service exceeds FLS's budgeted appropriations for such service for a fiscal year.]

[CREDITWORTHINESS: **Not Federal**

For the purpose of determining the ability of FLS to meet its obligations related to service hereunder, Western may require reasonable credit review procedures. In addition, Western may require FLS to:

12.1 Provide and keep in effect during the term of this Contract, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under this Contract; or

12.2 Provide an alternate form of security acceptable to Western.]

13. BILLING AND PAYMENT FOR PORTFOLIO MANAGEMENT SERVICES:

13.1 The costs associated with providing Portfolio Management Services to FLS are specified in Exhibit B attached hereto. By August 1st of each year during the term of this Contract, Western will review the charges for Portfolio Management Services and, if necessary, will revise Exhibit B to reflect the updated costs for this service.

13.2 **[Not Federal:** Western will bill and FLS shall pay for Portfolio Management Services in accordance with the procedures established under either Section 13.2.1 or Section 13.2.2, as solely determined by Western. If determined necessary by Western, Western may change the section under which Western is billing and FLS is paying upon sixty (60) days notice to FLS.

13.2.1 After-The-Fact Billing:]

FLS shall pay Western for Portfolio Management Services provided in the previous month as directed on the monthly electric service bill **[Not Federal: ; or**

13.2.2 Advance Funding:

13.2.2.1 Western will estimate the initial amount of funds required.

The estimate shall be based on three (3) months of Western's charges for Portfolio Management Services.

13.2.2.2 The initial advance funding amount shall be due on the date specified on the bill for collection. The initial bill for collection will be issued in September 2004.

13.2.2.3 On a monthly basis, Western will estimate its charges associated with providing Portfolio Management Services to FLS for the following month. FLS shall advance this amount to Western as specified on its electric service bill.

13.2.2.4 Western shall use funds from FLS's trust account on a monthly basis for Western's charges associated with providing Portfolio Management Services to FLS in the previous month.

13.2.2.5 Any alternative method of advance funding shall be set forth in a separate contractual agreement.]

14. BILLING AND PAYMENT FOR SUPPLEMENTAL POWER:

14.1 FLS shall pay for Supplemental Power furnished hereunder in accordance with the rates, charges, and conditions set forth in the CVP Schedule of Rates for Custom Product Power, effective January 1, 2005, or any superseding rate schedules.

14.2 **[Not Federal:** Western will bill and FLS shall pay for Supplemental Power in accordance with the procedures established under either Section 14.2.1 or Section 14.2.2, as solely determined by Western. If determined necessary by Western, Western may change the section under which Western is billing and FLS is paying upon sixty (60) days notice to FLS.

14.2.1 After-The-Fact Billing:

FLS shall pay Western for Supplemental Power provided in the previous month as directed on the monthly electric service bill **[Not Federal: ; or**

14.2.2 Advance Funding:

14.2.2.1 Western will estimate the initial amount of funds required.

The estimate shall be based on three or more months of Western's costs attributable to FLS for Supplemental Power.

14.2.2.2 The initial advance funding amount shall be due on the date specified on the bill for collection. The initial bill for collection will be issued in September 2004.

14.2.2.3 On a monthly basis, Western will estimate its costs associated with providing Supplemental Power to FLS for the following month. FLS shall advance this amount to Western as specified on its electric service bill.

14.2.2.4 Advance funding for Supplemental Power costs may be collected for a period extending beyond the following month if the Parties agree.

14.2.2.5 Western shall use funds from FLS's trust account on a monthly basis for Western's costs associated with providing Supplemental Power to FLS in the previous month.

14.2.2.6 Any alternative method of advance funding shall be set forth in a separate contractual agreement.]

[15. TRUST ACCOUNTS FOR ADVANCED FUNDS:

FLS understands that it may be required to advance funds to Western for one or more trust accounts pursuant to Sections 13.2.2 and 14.2.2 and this section for the services provided under this Contract. This Section 15 provides for establishing and maintaining the trust account(s) required if Section 13.2.2 and/or Section 14.2.2 are in effect.

15.1 Funds that FLS advances to Western shall be sent in accordance with the information included on the bill(s) for collection and electric service bills, or as otherwise directed.

15.2 FLS shall be required to retain a balance of at least three (3) months of estimated Portfolio Management Services and/or Supplemental Power costs in the trust account(s) at all times. Western shall monitor the account(s); and, if Western determines that:

15.2.1 There are not sufficient funds in one or more of the accounts, Western shall notify FLS of the shortage and FLS shall advance the requested amount of funds to Western within ten (10) days; or

15.2.2 There are excessive funds in one or more of the accounts, Western, at its sole discretion, will either: 1) decrease subsequent amounts required by the amount in excess of the estimate, or 2) return any excess funds to FLS.

15.3 Western will provide FLS with:

15.3.1 A monthly statement of the transactions that were posted to the trust account(s), and the end-of-month balance in the account(s); and

15.3.2 An electric service bill that will reflect the previous month's Supplemental Power costs and/or Portfolio Management Services costs and the amount of advance funding required from FLS for the costs that Western anticipates it will incur while providing Supplemental Power and/or Portfolio Management Services to FLS for the following month(s).

15.4 Western shall be under no obligation to provide service under this Contract without FLS advancing sufficient funds and said funds being available in the trust account(s) as described herein.

15.5 Within sixty (60) days of termination of this Contract, and after Western has determined that all obligations incurred under this Contract have been satisfied, Western shall return any funds remaining in the trust account(s) to FLS without interest.]

16. DEFAULT PROVISIONS:

16.1 The failure of FLS to perform any of its payment obligations under this Contract shall constitute a default. If Western determines FLS to be in default, Western shall promptly notify FLS in writing. If FLS has not cured the default within seven (7) days, Western may suspend service under this Contract.

16.2 If FLS is determined to be in default and does not cure such default in a manner and within the timeframe established by Western, Western shall have the right to terminate this Contract, and assess damages, as follows:

16.2.1 If Western's aggregate gains exceed its aggregate losses and costs, including obligations incurred on behalf of FLS that extend past the current month, Western, after any set-off, shall make no payment to FLS and, notwithstanding anything in this Contract to the contrary, the amount by which such gain exceeds the losses and costs for the purposes of this Contract shall be zero (0); or

16.2.2 If Western's aggregate gains do not exceed its aggregate losses, including obligations incurred on behalf of FLS that extend past the current month, Western will promptly calculate the damages associated with the default. As soon as practical, Western will provide notice to FLS of the amount of the damages. Payment for the damages shall be made by FLS to Western within ten (10) business days after such notice is received.

17. GENERAL POWER CONTRACT PROVISIONS:

The GPCP, effective July 10, 1998, attached hereto, are hereby made a part of this Contract, the same as if they had been expressly set forth herein; Provided, That, for the term of this Contract, FLS hereby agrees to waive its rights under this Contract to Article 11 of the GPCP.

18. ENFORCEABILITY:

It is not the intent of the Parties that this Contract confer any rights on third parties to enforce the provisions of this Contract except as required by law or express provision in this Contract. Except as provided in this section, this Contract may be enforced, or caused to be enforced, only by Western or FLS, or their successors or assigns.

19. EXHIBITS MADE PART OF CONTRACT:

Exhibit A, Full Load Service, and Exhibit B, Charges for Portfolio Management Services, attached to and existing under this Contract may vary during the term hereof. Said Exhibits shall become a part of this Contract during the term fixed by their provisions. Exhibits A and B are attached hereto, and shall be in force and effect in accordance with their terms until superseded by a subsequent Exhibit, as allowed by the terms of the Exhibits, or terminated.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed
the day and year first above written.

FULL LOAD SERVICE CUSTOMER

By:

Title:

Address:

WESTERN AREA POWER ADMINISTRATION

By:

Title: Power Marketing Manager

Address: 114 Parkshore Drive

Folsom, California 95630

Exhibit A
(Full Load Service)

1. This Exhibit A, to be effective under and as a part of Contract 04-SNR-00____, shall become effective January 1, 2005, and shall remain in effect until either superseded by Exhibit A, Revision 1, or termination of the Contract.
2. On the effective date of this Exhibit A, Western will serve FLS's load up to _____ MWh per month, at a maximum rate of delivery of _____ MW.
3. Power provided under this Contract will be delivered to _____.
4. All power deliveries provided under this Contract shall be adjusted for the applicable transformation and transmission losses.

Exhibit B
(Charges for Portfolio Management Services)

1. This Exhibit B, to be effective under and as a part of Contract 04-SNR-00____, shall become effective January 1, 2005, and shall remain in effect until either superseded by Exhibit B, Revision 1, or termination of the Contract.
2. The following schedules will be developed for each day (hour ending 0100 through hour ending 2400) during the term of the Contract:
 - 2.1 Forecasted Hourly Load.
 - 2.2 Hourly Resources, equivalent to the forecasted hourly load, which may include:
 - 2.2.1 Base Resource / Exchange Program Power (if any);
 - 2.2.2 Western-contracted Supplemental Power [**w/o TPPSC** ; and/or]
 - 2.2.3 Spot-market Supplemental Power [**w/TPPSC** ; and/or];
 - 2.2.4 Third-Party Power.
 - 2.3 Revisions to the forecasted hourly load and/or resource schedules, as necessary.
3. Each month, FLS will be charged \$19.00 per daily schedule developed, as follows:

Schedule	Frequency
Forecasted hourly load	every day
Base Resource / Exchange Program	every day
Western-contracted Supplemental Power	0 - 31 days
Spot-Market Supplemental Power	0 - 31 days
[w/TPPSC Third-Party Power	0 - 31 days]

4. Each month, FLS will be charged for changes in load and/or resources which require Western to develop revised schedules as follows:

Number of Revised Schedules	Charge
0 to 30 revised schedules	\$0.00
Each additional increment of 20 or any portion thereof	\$500.00